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August 11, 1998



The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, NW, Room 814
Washington, DC 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, NW, Room 802
Washington, DC 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, NW, Room 832
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, NW, Room 826
Washington, DC 20554

The Honorable Michael Powell
Commissioner
Federal Communications Commission
1919 M Street, NW, Room 844
Washington, DC 20554

Re: Telecommunications Carriers' Use of Customer Proprietary
Network Information — CC Docket No. 96-115
Ex Parte Presentation

Dear Mr. Chairman and Commissioners:

PrimeCo Personal Communications, L.P. ("PrimeCo"),¹ hereby files this written *ex parte* presentation in the above-referenced proceeding. Pursuant to Section 1.1206(b) of the Commission's rules, two copies of this presentation are being submitted to the Secretary under separate cover.

¹ PrimeCo is a broadband PCS licensee in 8 MTA markets, and is the majority owner and sole general partner in the licensee for 3 MTA markets — Dallas MTA, L.P., Houston MTA, L.P. and San Antonio MTA, L.P. (the "Partnerships"). PrimeCo is filing this *ex parte* presentation, on its own behalf and that of the Partnerships.

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PrimeCo is writing in support of the joint letter submitted by a number of industry trade associations requesting that the Commission, on its own motion, stay the mechanized safeguard requirements adopted in the *Second Report and Order* in this proceeding.² The rules adopted in the *Second Report and Order* require telecommunications carriers:

- (1) to develop and implement software that indicates within the first few lines of the first screen of a customer's service record the CPNI approval status and reference the customer's existing service subscription; and
- (2) to maintain an electronic audit mechanism that tracks access to customer accounts, including when a customer's record is opened, by whom, and for what purpose, and to maintain these contact histories for at least one year.³

As the industry letter demonstrates, and as PrimeCo noted in reply comments submitted in support of petitions for reconsideration, numerous factors weigh in favor of eliminating these rules, including: cost, Y2K preparation, and the insufficient record on which the rules are premised.⁴

PrimeCo also submits that the electronic audit mechanism may compromise legitimate law enforcement and privacy interests. As noted, the electronic audit mechanism requires carriers to record every time a customer's account is accessed, by whom and for what purpose. Law enforcement agencies frequently subpoena customer records in the course of their investigations.⁵

² PCIA *et al.*, *Ex Parte* Presentation in CC Docket No. 96-115, filed July 20, 1998 (the "Industry Letter"); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket Nos. 96-115, 96-149, *Second Report and Order and Further Notice of Proposed Rulemaking*, FCC 93-27 (rel. Feb. 26, 1998) ("*Second Report and Order*").

³ 47 C.F.R. §§ 64.2009(a), (c).

⁴ See PrimeCo Reply to Comments and Oppositions, CC Docket No. 96-115, filed July 6, 1998, at 4-5. (PrimeCo also filed its own petition for reconsideration in this docket.)

⁵ See *In re. Janet G. Mullins*, 87 F.3d 1372, 1377 (D.C. Cir. 1996); *United States v. Spinosa*, 982 F.2d 620, 629 (D.C. Cir. 1992); *Reporters Committee for Freedom of the*

PRIMECO PERSONAL COMMUNICATIONS, L.P.

CC Docket No. 96-115

August 11, 1998 *Ex Parte* Presentation

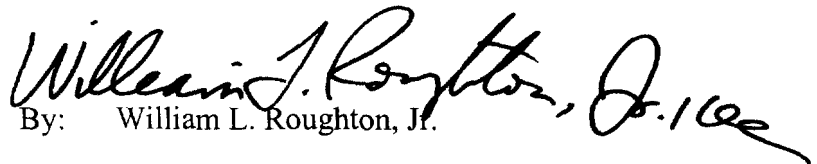
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Under the Commission's rules, the electronic audit mechanism would record the purpose for which the carrier's employee accessed the account, and thus might compromise law enforcement or individual privacy interests. This information would potentially be recorded and accessible to carrier employees. Furthermore, this information would remain part of the customer's records for a considerable period, *even if* the information disclosed in the records turns out to be exculpatory or if no charges are brought against the customer whose records are accessed for law enforcement.

PrimeCo does not purport in this filing to have the answers to these questions, and it submits that the implications of this audit mechanism have not been fully considered. Again, and as demonstrated in the Industry Letter and in numerous petitions for reconsideration and supporting comments, interested parties were provided inadequate notice that the Commission was considering such requirements. Further, the record does not support the computerized safeguard requirements. In sum, grant of the stay request will give the Commission the opportunity to address the significant issues raised with respect to this matter. Accordingly, PrimeCo urges the Commission to promptly stay these requirements.

Sincerely,

PRIMECO PERSONAL COMMUNICATIONS, L.P.


By: William L. Roughton, Jr.

cc: Mr. Ari Fitzgerald, Legal Advisor, Office of the Chairman
Mr. Dan Connors, Interim Legal Advisor, Office of Commissioner Ness
Mr. Paul Misener, Senior Legal Advisor/Chief of Staff,
Office of Commissioner Furchtgott-Roth
Mr. Peter Tenhula, Office of Commissioner Powell
Ms. Karen Gulick, Legal Advisor, Office of Commissioner Tristani
Mr. Dan Phythyon, Chief, Wireless Telecommunications Bureau
Ms. Kathryn C. Brown, Chief, Common Carrier Bureau
Mr. Thomas Power, Legal Advisor, Office of the Chairman
Mr. James Casserly, Senior Legal Advisor, Office of Commissioner Ness
Mr. Kevin Martin, Legal Advisor, Office of Commissioner Furchtgott-Roth
Mr. Kyle Dixon, Legal Advisor, Office of Commissioner Powell
Mr. Paul Gallant, Legal Advisor, Office of Commissioner Tristani